

Linda  
10/1/04

DOCID: BD 05

BILLING DOCUMENT 05334TC018

AR DATE: 10/13/2003 TRANS TYPE: 33 BUDGET FYS: 2003

DOCUMENT TOTAL: 58,125

APPR: TR2B COMMENTS: CD-Install

BILL PRINT FLAG: COLLECTION DUE DATE: 01/13/2005  
WAIVER FLAG:

PAYER CODE: 05 AERONCA

PAYER NAME: Aeronca, Inc.

ADDRESS:

CITY: A/R STATUS:  
STATE: ZIP:

10/01/04

DOCID: BD AP05 05

01-

LINE NO: 001 BFYS: 2003 APPR: TR2B

BUD ORG: 05F PE: 302ECTC REV SOURCE:

RPTG CATG: 29 SITE/PROJ: 0573RA00 TRANS TYPE: 33

AMOUNT: 29,062<sup>50</sup> I/D: DESC: Transferred from 05983T003B

02-

LINE NO: 002 BFYS: 2003 APPR: TR2B

BUD ORG: 05F PE: 302ECTC REV SOURCE:  
SITE/PROJ: 0573RA00

RPTG CATG: 29 TRANS TYPE: 33

AMOUNT: 29,062<sup>50</sup> I/D: DESC: Transferred from 05983T003B

Note:

Per the attorney's request, we are closing acct no. 05983T003B and transferring the remaining amount to acct no. 05334TC018 to place these funds in a special account. See S. Estes memo dated 9/16/04



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

C-14J

**MEMORANDUM**

**DATE:** September 16, 2004

**SUBJECT:** Establishment of Second (Non-Disbursement) Special Account  
Skinner Landfill Site, 0573

**FROM:** Sherry L. Estes *SE*  
Associate Regional Counsel

**TO:** Cyprian O. Ejiasa  
Regional Comptroller

RECEIVED  
COMPTROLLER BRANCH  
2004 SEP 17 PM 3:06  
EPA REGION 5  
PROTECTION AGENCY  
CHICAGO, IL

The purpose of this memorandum is to request that you set up a second special, non-disbursement account, within the Hazardous Substance Superfund, for the Skinner Landfill Site, 0573. Please note that there is an already-existing special account for the Skinner site, which was set up to receive monies from various parties who resolved their liability as part of the RA decree entered on April 3, 2001 in U.S. v. Elsa Skinner-Morgan, et al., C-1-00-424 (Doc. #17). Entered on the same day as the RA decree, there was also a cost recovery decree under the Agency's municipal policy with several municipalities. (same case/caption, Doc. #16). Monies from these two consent decrees were placed into the first Skinner special account. However, under the RA decree, there is an obligation to pay 80% of the monies from the existing special account to the parties who completed the remedial action. This 80% disbursement obligation was limited to specific settlements defined by the RA decree. The monies which I am urging be placed into the second special account are not subject to disbursement to the RA work parties, and creation of a second account should facilitate Superfund budgeting, since we would know that the monies in the second account are available for financing EPA's site-related expenditures.

I urge that the following funds be placed into a second special account for the Skinner Landfill site: the last two installments for the cost recovery decree with Aeronca, Dow Chemical Company v. Acme Wrecking Co. et al. and U.S. v Aeronca, Inc. et al., C-1-97-308 (consolidated actions). Under this CD, Aeronca is obligated to pay a total of \$232,500 in eight installments of \$ 29,062.50. It has paid the first six installments; two installments remain to be paid. The next installment will be paid in October 2004, and the final installment in January 2005. The

company is also obligated to pay interest on all but the first installment, and has been making interest payments.

Because the original Aeronca cost recovery settlement, concluded subsequent to the RA decree, was coded "T0," my understanding is that the remaining installments have to be reprogrammed as monies going into a special account instead of to the larger Hazardous Substance Superfund. Please note that Linda Nachowicz, the Acting Enforcement Coordinator for the Superfund Division, concurs in the request that the monies be re-programmed.

The other monies that would be placed into this second special account are the monies which we anticipate receiving as reimbursement of oversight costs from the RA work parties. Please note that we have never billed for oversight costs at Skinner; the RA CD anniversary date was April 2, 2002. Sheila Barnes is in the process of correcting this oversight. Once the oversight billing monies have been received, they could also be placed into the same special account as the remaining Aeronca installments.

Funds to be transferred into this second special account can be used as follows: There are no restrictions on the use of the Aeronca installments set forth in the Aeronca consent decree. By placing the monies into the special account, the only restrictions would be that the monies be used for future response activities at or in connection with the Skinner Landfill site. According to the RA decree, the only restrictions on the use of the oversight monies, once they have been reimbursed to EPA, is that they be used for response costs at or in connection with the Site (and they can be transferred to the Superfund once there is no need for response activities at the Site). Aeronca funds could also be transferred to the Superfund once there is no further need for response.

For your convenience, I have also appended my earlier memo, describing the creation and use of the original special account at the Skinner site. I would be happy to address any questions or concerns that you might have about either memo in person, or by telephone at 6-7164.

Encl.

cc: L. Haile  
L. Nachowicz  
S. Hansen, RPM  
D. Garber, ORC  
C. Melodia, ORC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:  
C-14J

**MEMORANDUM:**

SUBJECT: Establishment of "Special Account" for the  
Skinner Landfill Site; West Chester, Ohio  
Site ID # 0573

FROM: Sherry L. Estes  
Associate Regional Counsel

SS

TO: Anthony Audia, Chief  
Program Accounting & Analysis Section

DATE: June 21, 2001

The Office of Regional Counsel requests that a special account for the Skinner Landfill Site in West Chester, Ohio ("Site") be established to manage a portion of the monies to be received pursuant to two separate consent decrees: (1) an RA Decree, and (2) a decree under the Agency's municipal solid waste policy, with several West Chester-area towns and villages ("MSW Decree"). Monies which are to be deposited to the special account under the RA Decree will come from several sources: de minimis cashout parties, settling federal agencies, and the work parties. A copy of the RA Decree, which was effective April 2, 2001, was previously provided to your office; however a final copy of the appendices listing the settling defendants, including each de minimis defendant's/ federal agency's settlement amount, is attached to this memorandum. Additionally, the MSW Decree is also enclosed with this packet. This request and transmittal is made in accordance with procedures outlined in EPA accounting guidance for Special Accounts.

**BACKGROUND**

**RA Decree**

The RA Decree, entered by the court on April 2, 2001, provides that the Settling Generator/Transporter Defendants ("Work Parties") will implement the remedial action set forth in the final ROD for the Site, as implemented by the final EPA-approved remedial design for the Site. No cooperative agreement or state superfund contract has been developed because the Work Parties have just recently begun remedial construction, and are expected to complete their obligations under the RD/RA Consent Decree.

The RA Decree required the Settling De Minimis Defendants, within 30 days of lodging of the Decree, to pay the cash-out amounts set forth in Appendix G, into a Special Account, to be established by EPA, within the Hazardous Substance Superfund. Although the RA Decree was only entered on April 2, 2001, it was lodged on May 28, 2000, almost ten months earlier. For this reason, most of the monies owed by the De Minimis Defendants was forwarded to Region 5, by means of the Financial Litigation Unit in Columbus, Ohio, around the end of June, 2000, or soon thereafter. Certain other de minimis parties, however, have only recently made their payments. Even though the majority of the de minimis parties had previously paid the amounts owed under the RA Decree, it was not possible to set up a Special Account for the Site until the RD/RA Consent Decree was entered by the Court.<sup>1</sup>

Four settling federal agencies will also be making payments into the Special Account under the terms of the RA Decree; the names of the agencies, as well as the amount payable on behalf of each agency, are set forth in the attached RA/CD Appendix F. With the exception of the monies to be paid by the U.S. Postal Service, the other agency monies will be paid as a lump sum by the Judgment Fund of the U.S. Treasury, and will be transmitted, via electronic funds transfer, through the Columbus, Ohio Financial Litigation Unit. The \$25,356.46 to be paid by the U.S. Postal Service will be sent via electronic funds transfer, but will be transmitted separately. I anticipate that Region 5 should anticipate receipt of these funds in approximately one month.

The RA Decree also contemplates that other monies may be deposited into the Skinner Landfill Special Account. The Work Parties may have an obligation to refund a percentage of EPA's forgiveness of past costs under the Agency's Orphan Share Reform, in the event that they are not required to implement certain contingent aspects of the remedy. In all of the instances discussed in the preceding paragraph, as well as this paragraph, the RA Decree directs that the monies are to be deposited into the Special Account. In addition, there is a potential that the Site might be capable of re-use; if the Site is sold, the RA Decree provides that the majority of the proceeds will also be deposited into the Special Account. However, this latter scenario, as well as the potential obligation of the Work Parties to refund a portion of the orphan share forgiveness, is contingent. It is by no means certain that a buyer for the Site will surface, with a plan for beneficial Site re-use that would be acceptable to the Agency.

Finally, the Work Parties must reimburse EPA's oversight costs under the RA Decree. While the RA Decree does not require that these reimbursed costs be placed into the Skinner Landfill Special Account, as set forth subsequently in this memorandum, the Superfund Division

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<sup>1</sup> It should be noted that some of the monies received from de minimis parties cannot be attributed to any particular de minimis party, possibly due to a lack of sufficient attribution information being forwarded by the Ohio Financial Litigation Unit along with the monies. It is my understanding that Craig Melodia of ORC and Vanessa Mbogo of your office are working together to resolve these discrepancies.

desires that these funds continue to be made available to address Site contingencies, rather than being remitted at this juncture to the Superfund.

The RA Decree also provides that up to 80% of the monies attained from the de minimis parties and settling federal agencies can be reimbursed to the Work Parties, upon their completion of certain, defined elements of the remedial action. The remaining 20% will stay in the Special Account in order to finance any future contingencies, such as necessary response actions that will not be implemented by the Work Parties under the RA Decree, or may thereafter be returned to the larger Superfund. Before they may receive a reimbursement of monies from the Special Account, the Work Parties must submit specified documentation for EPA's review. The disbursement provisions contained in the RA Decree are based upon model provisions for this purpose, and were approved by EPA HQ. Before being asked to disburse any monies from the Special Account to the Work Parties, the Program Accounting & Analysis Section will receive appropriate direction from ORC.

### **MSW Decree**

The MSW Decree, entered on April 2, 2001 at the same time as the RA Decree, embodies EPA's settlement with seven municipalities under the Agency's "Policy for Municipality and Municipal Solid Waste CERCLA Settlements at NPL Co-Disposal Sites" (February 5, 1998), ("MSW Policy"). The settling municipalities, and their settlement amounts under the MSW Policy, as entered in the MSW Decree, are set forth below:

<u>Municipality</u>	<u>Settlement</u>
<u>City of Blue Ash</u>	\$594.66
<u>City of Deer Park</u>	\$2,826.22
<u>City of Madeira</u>	\$3,307.20
<u>City of Mason</u>	\$477
<u>City of Sharonville</u>	\$1,568.80
<u>Village of Lincoln Heights</u>	\$7,526
<u>Village of Monroe</u>	\$918.22

Total Settlement under MSW Decree = \$ 17,218.10

The MSW Decree also provides that these monies are to be deposited into the Skinner Landfill Special Account. The RA Decree provides that 80% of these monies, in addition to other monies within the special account, are available to disbursement to the Work Parties, as previously discussed.

### **Summary of Costs**

The RA Decree attempts to resolve the liability of all of the settling defendants and settling federal agencies. The de minimis portion of the Decree gives both the Settling De Minimis Defendants and the Settling De Minimis Federal Agencies releases from liability related to entire site, i.e., past and estimated future costs. All de minimis parties paid, as part of their settlement, a premium payment, which accounts for risks associated with cost uncertainties and remedy failure. As for the Work Parties and the (non de minimis) Settling Federal Agencies, as long as they comply with their obligations under the RA Decree, they would be responsible for future response activities only if newly discovered conditions or information led EPA to conclude that the remedy, to be implemented under the RA Decree, was no longer considered protective of human health and the environment.

The MSW Decree resolves the liability of the municipalities settling under that Decree for the entire Site. The only re-openers under the MSW Decree relate to a future discovery that a Settling Municipality was not entitled to a settlement under EPA's MSW Policy.

(i) Past Costs

Through December 31, 1999, EPA's cumulative costs for the site were \$3,778,704.86, which does not include an interest calculation. This is the cost estimate under the old indirect cost rate figures, and was the cost rate in effect at the time that the RA Decree was negotiated. As to the Work Parties, all of these costs were forgiven under EPA's Orphan Share Policy, and other cost forgiveness (based upon the desire to achieve a settlement and litigation risk). If it is unnecessary for the Work Parties to implement certain contingencies, due to Site conditions, the Work Parties may have to reimburse the Agency up to \$ 800,000 in excess orphan share forgiveness.

(ii) Future Cost Estimate

The remedial action to be implemented by the Work Parties under the RA Decree is anticipated to cost \$10-15 million, depending upon which contingent aspects of the remedy actually will have to be implemented. Further detail regarding the contingent aspects of the remedy, and their associated estimated costs, is set forth in Appendix H to the RA Decree, enclosed with this memorandum. Future oversight costs, to be paid by the Work Parties, are estimated at approximately \$550,000 during the next year during which the majority of the remedial construction will occur. EPA will also incur additional oversight costs, which will be subject to reimbursement, during the 30-year operation and maintenance period. These costs, however, will be greatly diminished in amount.

Allocation of Funds Received Pursuant to the RD/RA and MSW Decrees

With the exception of the reimbursement of oversight costs by the Work Parties, all monies received under both the RA Decree and the MSW Decree must be deposited into the Skinner



Landfill Special Account. As previously discussed, 80% of the total of the following monies will be available for subsequent disbursement to the Work Parties:

<u>Funds Category</u>	<u>Total Amounts</u>
Private De minimis Parties	\$ 1,843,127.50
Settling Federal Agencies (excluding U.S. Postal Service)	\$ 659,738.69
U.S. Postal Service	\$ 25,356.46
Municipalities Settling Under MSW Decree	\$ 17,218.10

The 20% of the special account monies which are not subject to subsequent disbursement are to be used towards future costs, in the event that EPA determines that certain response activities, not covered by the RA Decree, are necessary at the Site, or in the unlikely default by the Work Parties of their RA Decree obligations. If they are not needed for response activities at the Site, they ultimately will be remitted to the Superfund.

Need to Establish Skinner Reserve Special Account or Sub-Account

As stated above, the Work Parties will reimburse EPA for its costs of overseeing the remedial action at the Site. Although the RA Decree does not require that these reimbursed oversight costs be placed in the Skinner Landfill Special Account, the Superfund Division would like to have these funds so designated, to give that Division flexibility in the event that additional response activities are necessary or in the unlikely event of the Work Parties' default on their obligations during the O&M period, but after they have reimbursed EPA's oversight costs. I have checked with Gary Worthman, the special account expert in OECA, who has indicated to me that there is no legal impediment to placing the reimbursed oversight funds into the Skinner Landfill Special Account.

However, in order for EPA to distinguish between those funds which will be subject to disbursement to the Work Parties, and those which will be reserved to the Site and/or later to the Superfund, it would be a good idea to set up some type of Skinner Reserve Special Account, which should be a type of sub-account within the Skinner Landfill Special Account. Monies which should be deposited into the Skinner Reserve Special Account are:



(1) The reimbursed oversight costs just discussed, and

(2) Twenty percent (20%) of the reimbursed costs not subject to subsequent disbursement to the Work Parties, which are payable under the RA Decree and the MSW Decree by the settling federal agencies, private de minimis parties, and municipalities.

**There might be a legal impediment to setting up two distinct special accounts**, one named the Skinner Landfill Special Account and the other the Skinner Reserve Special Account; these legal difficulties can be avoided if the Skinner Reserve Special Account is a sub-account within the larger account. However, if having a type of sub-account is very difficult or especially if it would be a violation of EPA's Superfund accounting regulations or procedures, please contact me immediately to discuss.

I, Sherry L. Estes, am the attorney for this site; I can be reached at (312) 886-7164. The Remedial Project Manager is Scott Hansen at (312) 886-1999.

cc: V. Mbogo

RECEIVED BY YOUR ALC  
ALL TRANSACTIONS SORTED BY ALC  
INCLUDES THIRD PARTY SUBMITTER DATA  
Start Date 11/01/04 End Date 11/17/04

Skinner Landfill, OH  
0573  
05334TC018

Originating ALC Customer ALC Submitter ALC PAYMENT  
68010030 68011005

Document Reference Number Summary Amount  
09400539 \$55,727.62

Accomplished Date Accounting Date Number of Detail(s) Originator DO Symbol  
11/10/2004 11/30/2004 1 X0094

ALC Contact Contact Phone  
Resa D Lockhart 202-564-7379  
Contact Email  
lockhart.resa@epa.gov

Detail Number Receiver Treasury Account Symbol Receiver DUNS+4 Sender Treasury Account Symbol Sender DUNS+4  
1 681099

Purchase Order Number Invoice Number  
ci 042005257

Obligating Document Number Requisition Number Contract Number  
iotv  
CLIN Jas Number

ACT(trace number) Job (Project) Number Pay Flag Receiver Dept Code  
F 68

Unit of Issue Quantity Unit Price Detail Amount  
ea 1 \$55,727.62 \$55,727.62

ACRN Accounting Classification Code FSN/AAA/ADSN DOI Activity Address Code  
0

Transaction Contact Contact Phone  
Resa Lockhart 202-564-7379

Transaction Description Miscellaneous Information

DJ04-171, Farmland Industries, \$20,148.48; DJ04-175, LTV Steel Company,  
\$6,333.22; DJ04-178, Aeronca Inc Et. Al, \$29,245.92

05333TC018

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29,062.50 (1)

183,42997

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20,